

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Petition by the Colorado Public Utilities)	CC Docket No. 96-45
Commission, Pursuant to 47 C.F.R.)	
§ 54.207(c), for Commission Agreement)	
in Redefining the Service Area of)	
Delta County Tele-Comm, Inc.,)	
A Rural Telephone Company)	

**SUPPLEMENT TO PETITION BY THE COLORADO PUBLIC UTILITIES
COMMISSION**

The Colorado Public Utilities Commission (COPUC) hereby submits this Supplement to its Petition for Commission agreement to redefine the service area of Delta County Tele-Comm, Inc., a rural telephone company (Delta). COPUC submitted its Petition to the Commission on August 12, 2002. A number of comments have already been filed regarding that Petition. On April 12, 2004, the Commission released its Public Notice soliciting supplemental and additional comments on a number of pending petitions, including the instant Petition. *See Public Notice*, CC Docket No. 96-45, DA 04-999 (rel. April 12, 2004), 69 Fed. Reg. 22029-02 (published April 23, 2004) (Public Notice). COPUC now affirms its request for Commission agreement to redefine Delta's service area, pursuant to the provisions of 47 C.F.R. § 54.207(c).

Supplement to Petition

COPUC's Petition seeks Commission agreement to redefine Delta's service area to the wire center level pursuant to the provisions of 47 C.F.R. § 54.207(c). As explained in the Petition, Delta's current service area (*i.e.* its study area) comprises 6 separate wire centers. That service area is approximately 1,526 square miles, and includes geographically disparate areas, such as cities, towns, valleys, and mountainous regions of the state. The Public Notice solicits supplemental comment regarding COPUC's Petition in light of the Commission's *Highland Cellular Order*¹ and *Virginia Cellular Order*.² In those orders the Commission articulated a new public interest analysis and new standards for designating competitive Eligible Telecommunications Carriers (ETC) for rural areas.

¹ *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004).

Those new standards are intended to apply to related proceedings, such as petitions for redefinition of rural service areas under Rule 54.207(c).

The *Highland Cellular Order* and *Virginia Cellular Order* (Orders) both concerned primarily petitions for designation as competitive ETCs in certain service areas, including rural service areas. COPUC emphasizes that its Petition does not concern ETC designation, but, rather, is a request for Commission concurrence in redefining a rural service area to the wire center level. In Colorado, COPUC has claimed jurisdiction to consider providers' requests for designation as ETCs. As such, COPUC, in specific ETC designation proceedings, undertakes the analysis required in 47 U.S.C. § 214(e)(1) and (2).

Insofar as redefinition proceedings are concerned (*e.g.* the present Petition), the Orders articulate important points: First, the Commission reemphasizes³ its concern that cream-skimming in rural areas by competitive ETCs be minimized. The Commission explained that rural cream-skimming occurs when competitors serve only the low-cost, high-revenue customers in a rural company's study area, thereby undercutting the incumbent LEC's ability to provide service throughout the area. *See Highland Cellular Order*, paragraphs 26 and 39; *Virginia Cellular Order* paragraph 32. After analyzing information regarding population density in certain wire centers, the Commission refused

² *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22 2004).

³ When seeking to redefine a rural service area, a state commission and the Commission itself must consider the Joint Board's recommendations regarding areas served by rural companies. Notably, the Joint Board's first recommendation in its 1996 decision (*see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd. 87 (1996)) was that the potential for cream-skimming by competitive ETCs be minimized.

to designate competitive ETCs to serve in those wire centers only, because such action would have allowed a competitor to cream-skim (*i.e.* to serve only the lowest-cost, highest-density wire centers). *See, Highland Cellular Order*, paragraphs 29-31; *Virginia Cellular Order*, paragraphs 35-36. On the other hand, the Commission agreed to redefine some rural study areas to the wire center level after examining population density in those wire centers and concluding that the incumbent's ability to serve its entire study area would not be undermined, and after finding that the cellular competitor intended to provide service throughout its licensed territory. *Highland Cellular Order*, paragraphs 39; *Virginia Cellular Order*, paragraphs 40 and 42.

Second, the Commission noted that concerns relating to cream-skimming are diminished if the incumbent LEC has disaggregated its high cost support. Specifically, the Commission stated that, "There are fewer issues regarding inequitable universal service support and concerns regarding the incumbent's ability to serve its entire study area when there is in place a disaggregation plan for which the per-line support available to a competitive ETC in the wire centers located in 'low-cost' zones is less than the amount a competitive ETC could receive if it served in one of the wire centers located in the 'high-cost' zones." *See Highland Cellular Order*, footnote 96. The Commission did hold that disaggregation of support will not "in every instance" protect against cream-skimming. *See Highland Cellular Order*, paragraph 32.

Third, in the Orders the Commission expressed concern with designating competitive ETCs to serve below the wire center level. *See, for example, Highland*

Hence, the potential for cream-skimming in rural service areas has been a required consideration in redefinition proceedings even prior to issuance of the Orders.

Cellular Order, paragraph 33 (competitor must commit to provide supported services to customers throughout a "minimum geographic area"). The Orders held that a rural telephone company's wire center is an appropriate minimum service area for a competitive ETC. *See Highland Cellular Order*, paragraphs 33 and 37); *Virginia Cellular Order*, paragraph 40.

COPUC's Petition (for Commission concurrence in redefining Delta's study area) is consistent with the points made in the Orders. As explained in the Petition, COPUC is seeking to redefine Delta's study area to the wire center level. The Orders held that this is an appropriate service area for a competitive ETC in a rural area.

COPUC also reemphasizes that in this case Delta has disaggregated its universal service support under Path 3 (47 C.F.R. § 54.315(d)). Prior to this disaggregation, Delta received universal service support of \$16.92/access line for its entire study area.

However, under Path 3 Delta itself elected to disaggregate support as follows:

- \$11.36/access line in the Cedaredge wire center;
- \$12.36/access line in the Paonia wire center;
- \$14.37/access line in the Eckert wire center;
- \$19.91/access line in the Hotchkiss wire center;
- \$35.12/access line in the Crawford wire center;
- \$47.22/access line in the Somerset wire center.⁴

⁴ This information, along with the information regarding access lines per Delta wire center, is presented in Attachment 1 to the Petition, Delta's Path 3 disaggregation plan. That plan was based upon 2002 information.

In considering whether to designate a competitive ETC below a rural company's study area, the Orders placed special emphasis on population density in each wire center.

The Petition presents similar information regarding Delta:

- Cedaredge wire center--2,882 access lines;
- Paonia wire center--2,564 access lines;
- Eckert wire center--1,696 access lines;
- Hotchkiss wire center--1,929 access lines;
- Crawford wire center--904 access lines;
- Somerset wire center--325 access lines.

Obviously, Delta's method of disaggregating its universal service support has effectively restricted, if not entirely eliminated, a competitive ETC's opportunity to cream-skim.

There is now a substantial difference in the support available to potential competitors.

Potential ETCs seeking to serve only low-cost, high-density wire centers will receive substantially less universal support.

Since the filing of COPUC's Petition in August 2002, an ETC proceeding concerning Delta has occurred in Colorado. When the Petition was originally filed, no competitive companies had sought ETC designation in any Delta wire center. Since then, however, a wireless company, NCTH, Inc. dba Clear Talk, has been granted ETC designation in three Delta County wire centers pending the outcome of this redefinition proceeding. *See* COPUC Decision No. R03-1464.⁵ Clear Talk originally requested ETC designation in five of the six Delta wire centers. However, Clear Talk's license does not allow it to serve the entirety of two of the five wire

⁵ Available at COPUC's website, www.dora.state.co.us/puc.

centers, or the entire Delta study area. As a result, Clear Talk ultimately withdrew its application for the two wire centers it could not serve in their entirety. Clear Talk has been granted status for three Delta wire centers: Cedaredge, Eckert, and Hotchkiss.

Clear Talk's designation is based on a Stipulation and Settlement Agreement in the case that establishes customer protection and service quality standards to which Clear Talk must adhere. In addition to its existing plans, Clear Talk agreed to provide a basic universal service offering with unlimited local service at an affordable rate. In this case, cream skimming was not considered to be a concern as the underlying provider, Delta County, has disaggregated and targeted support to the wire center level. Clear Talk is able, through its BTA license, to provide service to the entirety of each of the three wire centers listed above. The Stipulation under which Clear Talk has been granted ETC designation, with Commission concurrence with this Petition, places Delta and Clear Talk in a competitively neutral position.

CONCLUSION

For the reasons stated here and in the Petition, COPUC requests that the Commission concur with COPUC in redefining the service area for Delta County Tele-Comm, Inc.

Dated, this 14th day of May, 2004.

KEN SALAZAR
Attorney General

ANTHONY MARQUEZ, 8389*
First Assistant Attorney General
State Services Section
Attorneys for
The Colorado Public Utilities Commission
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5380
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within SUPPLEMENT TO
PETITION BY THE COLORADO PUBLIC UTILITIES COMMISSION this 14th day
of May, 2004 by U.S. Mail to the persons listed below.

John F. Jones,
Vice President,
Federal Government Relations
CenturyTel, Inc.
100 CenturyTel Park Drive
Monroe, Louisiana 71203

Karen Brinkmann
Tonya Rutherford
Latham & Watkins
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304

Jeffrey Marks
c/o ITTA
Latham & Watkins
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304

David LaFuria
c/o N.E. Colorado Cellular, Inc.
Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036

Margot Smiley Humphrey
c/o NRTA, OPASTCO, Western Alliance
and CTA
Holland & Knight
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

L. Marie Guillory
Jill Canfield
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle
1401 H Street, NW, Suite 600
Washington, D.C. 20005